IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967.

**No. 1252**

ROGER D. BRANIGIN, EDWIN M. S. STEERS,
THURMAN M. DEMOSS, AS MEMBERS OF THE
STATE ELECTION BOARD OF INDIANA,
JOSEPH W. SUMMERS,
NELSON G. GRILLS,

*Appellants,*

*vs.*

DOROTHY C. DUDDLESTON, JOHN P. GALLAGHER,
MILES H. MARSHALL, LOUIS Y. MUNDY,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

## MOTION TO DISMISS OR AFFIRM.


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Appellees move the Court to dismiss the appeal herein on the ground hereinafter set forth or to affirm the judgment sought to be reviewed on the Appeal by members of the State Election Board of Indiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Rule 16 (1) (c) authorizes filing a Motion to Dismiss or Affirm the judgment sought to be reviewed on appeal from a Federal Court for the above stated cause.

## I. APPELLANTS' JURISDICTIONAL STATEMENT IS NOT CONCISE.

Rule 15 (1) (d) requires "a concise statement of the case containing the facts material to the consideration of the questions presented." The Jurisdictional Statement filed on behalf of Appellant State Election Board is rambling and argumentative. It conforms to no definition of "concise". After page 17 thereof it becomes primarily a diatribe critical of what Appellants consider the political consequences of the decree of the three-judge Federal panel. Said appeal should be dismissed for its failure to comply with Rule 15 (1) (d).

## II. NO SUBSTANTIAL QUESTION HAS BEEN PRESENTED BY APPELLANT MEMBERS OF THE STATE ELECTION BOARD OF INDIANA.

Rule 15 (1) (f) requires "a statement of the reasons why the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution." Appellants allege four questions (Appellants' Jurisdictional Statement, page 6). These four questions express in different language the following basic proposition: Where a state law establishing congressional districts has been ruled unconstitutional and a Federal District Court is requested to establish districts in lieu thereof, that Court has *no* power other than to maintain the existing, albeit unconstitutional, congressional districts making only such population adjustments between them as will result in a de minimus variance from the optimum. The necessary corollary to this proposition is that

*no consideration whatsoever* can be given to the integrity of county lines or other governmental units, historical patterns or geographic boundaries. Appellants' proposition has no basis in law either as announced by this Court or by six Federal District Courts which have, in fact, redistricted. This motion is not the place for detailed examination of all these Federal Court redistricting decrees. Brief examination of the Maryland case, which this Court has reviewed and approved, will suffice. *Maryland Citizens Committee, etc.* v. *Tawes,* 253 F. Supp. 731 (D. Md. 1966) affirmed sub nom. *Alton* v. *Tawes,* 384 U. S. 315.

Maryland has twenty-one counties. Of these twenty-one, boundary line integrity of only three was violated. Two very large counties, Montgomery (340,000) and St. Georges (357,000) were not split. The only three counties that were split were Baltimore, Anne Arundel and Howard Counties. Baltimore County had to be split because of its excessive population. Anne Arundel and Howard are both adjacent to Baltimore County and had to be added to residual portions of Baltimore County to complete districts. The First District consists of the Bay area counties which are sparsely populated. The three-judge panel in the Maryland case expressly removed Harford County from the old First District and added Calvert and St. Marys Counties (along with part of Anne Arundel County) to form the new First District. Under Appellants' novel theory the Maryland Court could not have made any changes in the old First District except to add sufficient population to bring that district from 14.9% below the optimum up to the optimum. This could have been done by pulling population out of Baltimore County, since Harford County (part of the old First District) is adjacent to Baltimore County and since Baltimore County had to be divided in any event. The Dis-

trict Court's *rejection* of such an approach was necessarily approved by this Court in *Alton* v. *Tawes*. The three-judge panel in the Maryland case stated:

> "Some departure from the ideal is, of course, inevitable. The equality which the Constitution commands allows, however, only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination." (Page 733)

On page 734 of that Opinion, the Court stated:

> "A basic goal has been to achieve the requirements of equality laid down in the Supreme Court decisions without doing unnecessary violence to the heart of existing districts, county lines, and district lines within the counties and ward lines in the city. We think that our plan makes the districts as compact as possible and in the few cases where it was deemed necessary to split a county, we have taken into account the character of the neighborhoods involved."

Appellants' unusual theory, that county lines can be given *no consideration whatsoever*, flies in the face of this Court's decision in *Reynolds* v. *Sims*, 84 S. Ct. 1362 (1964) page 1391:

> "A state may legitimately desire to maintain the integrity of various political subdivisions insofar as possible and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting without any regard for political subdivisions or natural or historical boundaries may be little more than an open invitation to partisan gerrymandering."

While it must be admitted that Congress has not, as yet, devised a formula to ensure compact and contiguous districts, the desirability of obtaining such a formula is unquestioned. A quick look at the dissenting judge's map of

grotesquely formed districts side by side with the majority's map of compact and regularly formed districts provides eloquent testimony in support of the language of this Court quoted from *Reynolds* v. *Sims* and the stamp of approval placed by this Court on *Maryland Citizens Committee* v. *Tawes.*

Appellants quote at great length from the jurisdictional statement filed by Appellees in the prior litigation (*Duddleston, et al.* v. *Grills,* 385 U. S. 455). Appellants here (Appellees there) had this to say at pages 6 and 7 of their Motion to Affirm:

> "A county, when necessary, may be so divided that portions of it are contained in different congressional districts. Nevertheless, the county is a unit whose existence must be considered. The state's machinery for conduct of elections is based on that unit. The organization of the political parties sponsoring candidates in an election is based on that unit. The voters in an election consider themselves members of that unit. Any practicable scheme of congressional districting must be based on that unit especially when as in the instant situation a scheme based on that unit produces districts that are substantially equal. The use of smaller population units might produce districts more mathematically equal, but it would simultaneously produce chaotic elections and confused voters."

Appellants have gone full cycle from basic reliance upon county units to a position which demands that a county line has absolutely no relevance whatsoever in constructing congressional districts. Appellants' novel theory is being practiced nowhere in these United States and has not been required to be practiced by any adjudication of this Court. Preservation of county lines could *not* be used as an excuse to save a congressional plan having a 20 percent variance from the optimum as was the case in the prior appeal. But where county lines can be preserved and population var-

iance brought within 2.6 percent total variance as has been accomplished here, such preservation is constitutionally sound, is in the best interests of the voting public and is in accordance with the pronouncements of this Court.

WHEREFORE, Appellees submit that the decision of the three-judge Federal Court from which this Appeal has been taken should be dismissed or in the alternative that said appeal should be affirmed in all things without plenary consideration.

Respectfully submitted,

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